

Office of the Secretary, Interior

§4.1376

§4.1372 Contents of request for review, response to request, amendment of request.

(a) The request for review shall include:

(1) A copy of the notice of suspension or the notice of proposed suspension and rescission;

(2) Documentary proof, or, where appropriate, offers of proof, concerning the matters set forth in 30 CFR 773.20(b) or 773.21(a)(1) through (4) showing that the person requesting review is entitled to administrative relief;

(3) A statement whether the person requesting review wishes an evidentiary hearing or waives the opportunity for such a hearing;

(4) A request for specific relief; and

(5) Any other relevant information.

(b) Within 20 days of service of the request for review by the permittee in accordance with 43 CFR 4.1109, OSM and all interested parties shall file an answer to the request for review or a motion in response to the request or a statement that no answer or motion will be filed. OSM or any interested party may request an evidentiary hearing even if the person requesting review has waived the opportunity for such a hearing.

(c) The permittee may amend the request for review once as a matter of right before a response in accordance with paragraph (b) of this section is required to be filed. After the period for filing such a response, the permittee may file a motion for leave to amend the request for review with the administrative law judge. If the administrative law judge grants a motion for leave to amend, he shall provide OSM and any other party that filed a response in accordance with paragraph (b) not less than 10 days to file an amended response.

§4.1373 Hearing.

(a) If a hearing is requested, the administrative law judge shall convene the hearing within 90 days of receipt of the responses under §4.1372(b). The 90-day deadline for convening the hearing may be waived for a definite time by the written agreement of all parties, filed with the administrative law judge, or may be extended by the ad-

ministrative law judge, in response to a motion setting forth good cause to do so, if no other party is prejudiced by the extension.

(b) The administrative law judge shall give notice of the hearing at least 10 days in advance of the date of the hearing.

[59 FR 54362, Oct. 28, 1994; 59 FR 56573, Nov. 14, 1994]

§4.1374 Burdens of proof.

(a) OSM shall have the burden of going forward to present a prima facie case of the validity of the notice of suspension or the notice of proposed suspension and rescission.

(b) The permittee shall have the ultimate burden of persuasion by a preponderance of the evidence that the notice is invalid.

§4.1375 Time for initial decision.

The administrative law judge shall issue an initial decision within 30 days of the date the record of the hearing is closed, or, if no hearing is held, within 30 days of the deadline for filing responses under §4.1372(b).

§4.1376 Petition for temporary relief from notice of suspension or notice of proposed suspension and rescission; appeals from decisions granting or denying temporary relief.

(a) Any party may file a petition for temporary relief from the notice of suspension or the notice of proposed suspension and rescission in conjunction with the filing of the request for review or at any time before an initial decision is issued by the administrative law judge.

(b) The petition for temporary relief shall be filed with the administrative law judge to whom the request for review has been assigned. If none has been assigned, the petition shall be filed with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (Telephone 703-235-3800).

(c) The petition for temporary relief shall include:

(1) A statement of the specific relief requested;